IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5032 of 1998

with

MISC.CIVIL APPLICATION No 1834 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHOKA COTSYAN

Versus

DUNGARBHAI DAHYABHAI PARMAR

Appearance:

1. Special Civil Application No. 5032 of 1998
   M/S TRIVEDI & GUPTA for Petitioner No. 1
   PARTY-IN-PERSON for Respondent No. 1
   MR SK BUKHARI for Respondent No. 1
2. Misc.Civil Application No. 1834 of 2003
   MR MUKUL SINHA for Petitioner No. 1
   M/S TRIVEDI & GUPTA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 17/09/2004

ORAL JUDGEMENT

1. In this petition, the petitioner has challenged the order dated 26th February, 1997 passed by the Labour Court, Ahmedabad in T. Application no.432 of 1990 as confirmed by the order dated 31st January, 1988 passed by the Industrial Court, Ahmedabad in Appeal (IC) no.11 of 1997.

2. Short facts leading to the present petition are that the respondent was working with the petitioner-Company since 1963. It is the case of the petitioner that on 22nd June, 1990, when the respondent was on duty in the first shift, during the duty hours he left his work-place, went to the office of the Spinning Manager and started abusing him. For this misconduct, the petitioner issued a chargesheet dated 25th June, 1990 to the respondent in which it is stated that on 22nd June, 1990 while on duty the respondent at about 1.35 in the afternoon left his work, went to the office of Shri Saxena and used bad words and filthy language against the management and had vitiated the atmosphere due to which large number of workers who were incited and instigated by the respondent left the work. Thereafter, again the respondent went to the office of the Spinning Manager Shri Saxena and used filthy language, and had created an atmosphere of terror which had resulted into adverse effect on the production. While this incident was being investigated by the petitioner, it is the case of the petitioner that the respondent expressed his desire to submit his resignation and, in fact, tendered his resignation letter dated 25 June, 1990. It is the case of the petitioner that his resignation letter dated 25th June, 1990 was signed by the respondent and was also countersigned by the representative of the Union. It is also the case of the petitioner that in the said resignation letter, the respondent had clearly stated that he wishes to resign from service and that he may be relieved from service after paying his legal dues. The petitioner also contends that on 25th June,1990, the respondent also gave a separate letter which was also countersigned by the representative of the Union, in which letter it was stated that the respondent wishes to be relieved from the services and he may, therefore, be relieved after paying the proper compensation. It is also the case of the petitioner that initially, the request of the respondent for being permitted to resign from service was under consideration by the Management

since the respondent was facing serious charges of dereliction of duties. However, later on, by letter dated 29th June,1990, the resignation of the respondent was accepted, and accordingly, the respondent was paid through two different cheques amounts of Rs.21,327/- and Rs.20,537 on 31st July,1990 which payment according to the petitioner was made in presence of the representative of the Union. It is also the case of the petitioner that the respondent accepted those cheques, and in fact, encashed the amounts paid. The petitioner also points out that on 7th August,1990, the respondent was also paid an amount of Rs.1000/- from the credit society which was accepted and duly acknowledged by the respondent. Later on, the credit society also paid to the respondent an amount of Rs.16,213.40p. after adjustments of the loans taken by the respondent.

3. The respondent thereafter on 11th September,1990 approached the Labour Court by filing T.Application no.432 of 1990 challenging his so called termination and contending that the resignation was not voluntary. The Labour Court by its award dated 26th February,1997 passed in T.Application no.432 of 1990 was pleased to hold that the resignation of the respondent-workman was obtained through force and coercion. Consequently, the Labour Court was pleased to allow the application of the workman and directed that he be reinstated in service with full back wages and continuity of service. The said award dated 26th February, 1997 passed by the Labour Court, Ahmedabad, came to be challenged by the petitioner before the Industrial Court in Appeal IC no.11 of 1997. The appeal also came to be rejected by order dated 31st January,1998 by the Industrial Court. The petitioner has, therefore, filed the present petition challenging the above mentioned order of the Labour Court dated 26th February, 1997 as confirmed by the order of the Industrial Court dated 31st January, 1998.

4. I have heard the learned Advocate for the petitioner and the respondent appearing in person.

5. The learned Advocate for the petitioner has submitted that the respondent was facing departmental action for having committed serious misconduct. During the pendency of these proceedings, the respondent voluntarily tendered his resignation. This resignation was countersigned by the representative of the Union itself. It is, therefore, not possible to disbelieve the factum of resignation nor is it possible to conclude that the resignation was extracted through force and coercion. The learned Counsel has submitted that Courts below erred

in law in directing reinstatement of the respondent with full back wages.

6. The respondent appearing in person has contended that the Courts below have not committed any legal error and the judgment may, therefore, be confirmed.

7. Before I proceed to examine the rival contentions and also the decisions under challenge, it would be appropriate to record certain events which have taken place during the hearing of this petition. Learned Advocate for the petitioner had submitted that pursuant to the suggestion made by the earlier Bench, the petitioner in order to bring an end to the dispute offered to the respondent that by way of full and final settlement the petitioner is ready and willing to offer employment for the young son of the respondent since the respondent apparently would at this distant point of time not be in a physical condition to work with the petitioner. The respondent, however, expected that not only that his son be given employment but he be paid an amount of Rs.4 Lakhs by way of full and final settlement. It may be noted that by way of interim order passed by this Court, the petitioner had already paid an amount of Rs.50,000/- to the respondent. The petitioner has also been paying the benefits in terms of Section 17-B of the Industrial Disputes Act from 1997. The petitioner's Counsel had also shown readiness to consider foregoing these amounts in addition to offering employment to the son of the respondent. The respondent, however, is not agreeable for the settlement along these lines. I have, therefore, heard the matter on merits.

8. From the material placed on record, it can be seen that it is indisputable that the petitioner had initiated departmental proceedings against the respondent for certain allegations of dereliction of duties of having misbehaved with the superior officer, having shouted against and abused the management and of having enticed other co-workers while on actual duty. Without going into the question of veracity of these allegations, since the departmental proceedings never were concluded, suffice it to say, that the charges amounted to serious misconduct. It is the case of the petitioner that during the pendency of these proceedings, and while the respondent was under suspension, the respondent showed his willingness to tender his resignation. It is not in dispute that a resignation letter dated 25th June, 1990 was actually tendered to the petitioner in which the respondent has stated that he wishes to resign from service for personal reasons and that he may be relieved

from service after paying his legal dues. The respondent has not denied his signature in the resignation letter dated 25th June, 1990; nor has the respondent denied that the said resignation letter was countersigned by the representative of the Union of which the respondent was the member. The only suggestion put forward by the respondent is that his signature was taken by force and coercion. Another letter dated 25th June, 1990 has also been produced on record in which it is stated that the respondent wishes to be relieved from duties and he may be relieved after payment of the compensation. Once again, admittedly, this letter contains signature of the respondent and also that of the representative of the Union. It is the case of the petitioner that on account of the pendency of the proceedings involving the respondent in serious charges of misconduct, the management initially deliberated whether the resignation should be accepted or whether the departmental inquiry should be proceeded with. Eventually, the management accepted the resignation of the respondent and relieved him from service after paying legal dues of an amount in excess of Rs.41,000/- to the respondent through two different cheques. The respondent has not denied having received these cheques; nor has the respondent denied that he not only received the cheques in question but he also encashed them and thus accepted the amounts paid by the petitioner towards gratuity and other compensation. The respondent also has not denied having received an amount of Rs.1000/- from the credit society initially and later on another amount of Rs.16,213.40p from the credit society. Thus, the respondent accepted all the payments made by the petitioner as well as the credit society as if his employment had been brought to an end. In this view of the matter, it is not possible to believe the assertion of the respondent that he was forced to resign from service. Since the respondent has admitted his signature on the resignation letter and has also admitted the signature of the representative of the Union on the said document, it would be the duty of the respondent to point out that the resignation was extracted through force or coercion. In this regard, to my mind, the most relevant circumstance which goes against the respondent is that the respondent had voluntarily and willingly accepted the amounts paid by the management pursuant to the acceptance of the resignation. If the resignation of the respondent was not voluntary and was obtained by the management through force or coercion, what was the occasion for the respondent to accept the gratuity amount and the compensation paid by the petitioner and what was the occasion for the respondent to accept an amount of more than Rs.1700/- from the credit society is not

possible to appreciate. If the respondent was genuinely forced to resign and if the resignation was not voluntary, the most natural conduct on the part of the respondent would have been not to accept the monetary benefits offered by the petitioner. If the respondent has declined to receive the monetary benefits paid by the petitioner it would have been a circumstance in favour of the respondent and it would have been possible to examine other attending circumstances to find out whether the resignation was voluntary or whether the same was obtained through force, coercion or misrepresentation. In the present case, the respondent was facing departmental proceedings for serious charges. The resignation letter dated 25th June, 1990 admittedly signed by the respondent was tendered to the petitioner. This letter was countersigned by the Union leader. On the very same day, yet another letter again signed by the respondent and countersigned by the Union representative seeking compensation pursuant to resignation has also been tendered. The petitioner has paid up all legal dues to the respondent flowing from acceptance of the resignation. The respondent has also accepted the amounts. Is it possible then for the respondent to contend that the resignation was not voluntary? Unless and until there is strong evidence on record to establish that despite these circumstances the resignation of the respondent was not voluntary, it would not be possible for a Court of law to come to the conclusion that the petitioner has exercised force upon the respondent to secure his resignation. Upon perusal of the decisions of the Courts below, I find that the conclusion that the resignation was obtained through force and coercion is not borne out from cogent evidence on record. I find that the Labour Court had come to the said conclusion on the basis of surmises and conjectures. In absence of any relevant material, mere statement of the respondent in the facts of the present case would not be sufficient to establish that the resignation was not voluntary. The Industrial Court equally erred in upholding the conclusions of the Labour Court. This being the position, I find that the factual conclusions of the Court below cannot be sustained since there is no supporting evidence to reach to such conclusions. I find that there was sufficient material on record to show that the respondent had, in fact, intended to resign from the service to escape further consequences of the pending Departmental Inquiry. Pursuant to this intention, the respondent had, in fact, tendered his written resignation admittedly signed by him and countersigned by the Union representative. The amounts paid by the petitioner pursuant to the acceptance of the resignation were also

accepted by the respondent. The respondents contention, therefore, that the resignation was not voluntary does not inspire confidence and ought to have been rejected by the Courts below.

9. In the result, I find that the impugned award of the Labour Court dated 26th February, 1997 as upheld by the Industrial Court in its order dated 31st January, 1998 cannot be sustained, and the same are, therefore quashed and set aside. In the facts of the present case, and considering the age of the respondent, it is directed that the amount of Rs.50,000/- paid by the petitioner during the pendency of this petition shall not be recovered from the respondent despite this order. The petition is allowed. Rule is made absolute. No orders as to costs.

Misc.Civil Application no.1834 of 1998

In view of the admitted position that the respondent has received the amounts as directed by this Court in its interim order dated 28-4-2003, Misc. Civil Application does not survive, and the same is disposed of accordingly.

(Akil Kureshi,J.)